

ARNELL OIL CO.

IBLA 88-258

Decided July 26, 1989

Appeal from a decision of the District Manager, Casper District Office, Wyoming, Bureau of Land Management, denying a protest to the issuance of a right-of-way grant for underground crude oil pipelines, a station site, and an access road. W-88682.

Affirmed.

1. Oil and Gas Leases: Generally--Rights-of-Way: Act of February 25, 1920--Rights-of-Way: Applications--Rights-of-Way: Oil and Gas Pipelines

BLM may properly grant a right-of-way for a crude oil pipeline across a Federal oil and gas lease where BLM has adequately considered all relevant factors, including various alternative routes proposed by the lessee, and determined that only the selected route does not cross protected wetlands; that the selected route is consistent with BLM policy favoring the issuance of rights-of-way adjacent to existing facilities; and that the selected route does not, in any material respect, interfere with or diminish the rights granted to the lessee under its lease.

APPEARANCES: Mary E. Walta, Esq., Denver, Colorado, for appellant; Lyle K. Rising, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management; Anthony G. Melas, Esq., General Counsel, Unocal Pipeline Company, Los Angeles, California, for intervenor Unocal Pipeline Company.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Arnell Oil Company (Arnell) has appealed from a January 19, 1988, decision of the District Manager, Casper District, Wyoming, Bureau of Land Management (BLM), denying a protest to the issuance of a right-of-way grant for three underground 6-inch crude oil pipelines, a station site, and an access road, W-88682, to the Unocal Pipeline Company (Unocal), formerly the Pure Transportation Company (Pure), in an area commonly known as the Poison Spider Field. 1/ Arnell disputes BLM's location of the right-of-way to the

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1/ On Jan. 21, 1988, following denial of Arnell's protest, the Area Manager, Platte River Resource Area, BLM, approved right-of-way W-88682.

extent that two of the pipelines cross that part of Arnell's 840-acre oil and gas lease (C-36770) in sec. 11, T. 33 N., R. 83 W., sixth principal meridian, Natrona County, Wyoming.

In 1984, Pure filed a right-of-way application for three underground crude oil pipelines, pursuant to section 28 of the Mineral Leasing Act, as amended, 30 U.S.C. § 185 (1982). Following discussions with Pure and preparation of an environmental assessment (EA), BLM granted a right-of-way in a location other than the one sought. Arnell's first knowledge of the granting of the right-of-way was when one of its employees discovered Pure staking the pipeline route across sec. 11. Arnell registered its objections with the Platte River Resource Area Office, BLM, and eventually appealed the denial of its objections to this Board.

On January 30, 1987, the Board issued a decision, Arnell Oil Co., 95 IBLA 311 (1987), vacating BLM's decision denying Arnell's objections, setting aside the January 1985 right-of-way grant, and remanding the case to BLM for consideration of Arnell's objections. Our decision to remand the case to BLM was based on three conclusions: (1) that BLM had, in issuing Pure's right-of-way grant, failed adequately to consider whether the grant would diminish and/or interfere with Arnell's rights under its oil and gas lease; (2) that Arnell had raised substantial questions whether Arnell's suggested pipeline route crossed a wetlands area or whether, even if it crossed such an area, measures, short of rejecting that route, might be taken to protect the wetlands, consistent with Exec. Order No. 11,990; 2/ and (3) that the record did not support BLM's determination that Arnell's suggested pipeline route would conflict with the Natrona Management Framework Plan (MFP) regarding placement of rights-of-way. Accordingly, we remanded the case to BLM with specific directions to consider:

- (1) whether the areas crossed by Pure's original proposed route or Arnell's alternative, in fact, cross wetlands \* \* \*; and if so, whether mitigating measures might provide sufficient protection for [that area] or whether the granted right-of-way better protects [that area]; (2) whether Pure's proposed route, Arnell's alternative, or the granted right-of-way better accords with the

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fn. 1 (continued)

Arnell's notice of appeal, filed Feb. 19, 1988, stated that it related to the Jan. 21 decision. However, Arnell's statement of reasons (SOR) is directed to the Jan. 19 denial. We will consider Arnell's appeal to cover both actions by BLM.

2/ Exec. Order No. 11,990, as amended by Exec. Order No. 12,608, reprinted in 42 U.S.C.A. § 4321 app. at 195-96 (West Supp. 1989), is entitled "Protection of Wetlands." BLM originally invoked Exec. Order No. 11,988, as amended by Exec. Order No. 12,148, reprinted in 42 U.S.C.A. § 4321 app. at 193-95 (West Supp. 1989), relating to floodplain management, as additional authority for original issuance of the right-of-way in this case. As noted by Arnell in its SOR at page 11, note 2, this reliance by BLM was apparently abandoned, since BLM did not discuss that executive order on remand.

Natrona MFP; and (3) whether Arnell's rights under C-036770 have been diminished and/or interfered with by the granted right-of-way. [Footnotes omitted.]

Id. at 326. Further, we directed that BLM could, following its review, "issue a right-of-way to Pure for whatever right-of-way is supported by the record, be it the previously granted route, Pure's original proposal, Arnell's alternative, or some other route." Id. at 326-27.

By separate letters dated March 10, 1987, BLM notified Unocal and Arnell of the commencement of its consideration of the issues identified by the Board and their opportunity, for a period of 15 days from receipt of their respective letters, to submit any comments. Attached to each letter was a map depicting the location of Pure's original proposed route, Arnell's suggested route, and the approved route as granted and as built. Both Arnell and Unocal submitted responses, Arnell requesting a field meeting. BLM scheduled that meeting for April 1, 1987.

Representatives of Arnell, Unocal, and BLM attended the meeting. According to an undated memorandum to the file, the meeting primarily consisted of an on-site inspection of the various alternate pipeline routes, some of which had been staked on the ground. The memorandum reported, at page 2, that Arnell stated that the "pipeline as-built would interfere with potential future flow lines, roads to any future proposed wells, and/or interfere with water discharge pipes/ditches which he may decide to construct should he decide to drill on the western acreage of his lease." Further, the memorandum also stated that at the field meeting, Arnell asserted that it had never intended that its suggested route cross the wetlands area, and in response thereto was told by BLM that BLM had to consider that route, as instructed by the Board, but that Arnell could stake an alternate route on the ground, which route would also be considered by BLM.

On April 10, 1987, Arnell submitted written comments to BLM and also notified BLM that it had staked its intended alternate route, which was depicted on an attached map. That route represented a slight shift east from Arnell's original alternate route. Arnell stated that the staked route entirely avoided any drainage area. In its comments, Arnell argued that there was the potential for recovery of oil by secondary methods from reservoirs underlying areas in sec. 11 under lease to it which were isolated by the right-of-way. Arnell concluded in that letter that the approved pipeline route presented several problems for recovery of this oil, namely:

The first problem presented by the right-of-way is the obvious nuisance situation of having to go under Unocal's shallow pipelines, possibly many times. In addition, costly time delays would result in getting approvals, to say nothing of the fact that the [right-of-way] could be right where we want or need to locate something related to these operations. Finally, the establishment of the right-of-way establishes a preference for future use by others.

Arnell also reiterated its contention that its suggested route was not contrary to either Exec. Order No. 11,990 or the Natrona MFP.

In a supplement to its environmental assessment (SEA), dated November 30, 1987, BLM addressed the question of which was the most appropriate route for the right-of-way through sec. 11. Therein, it considered four alternative routes. 3/ Three of those routes, Pure's original proposed route and the two alternatives suggested by Arnell, identified as "Proposed Action," "Alternative A," and "Alternative B," respectively, in the SEA, run for the most part through the center portion of sec. 11, and are in fairly close proximity to each other in the portion of sec. 11 identified by BLM as containing wetlands. "Alternative C" is the originally approved route, which runs through the eastern portion of sec. 11 near the Powder River Road.

In its SEA, BLM considered the environmental impact of each of the four alternative routes. BLM concluded that a 30-acre wetlands area exists in the W\ NE^ and E\ NW^ of sec. 11. In a November 24, 1987, report attached to the SEA, Appendix A, Part I, at page 1, a BLM hydrologist concluded that "essentially all of the flow contributing to the wetland is from produced water being discharged to the surface." The source of that produced water is Union Oil Company of California (Union Oil) facilities in the South Casper Creek Field. 4/ BLM described the wetlands area as "open water with saturated, subirrigated lands extending along the outside edges; much of this area is inundated by water year-round, with seasonal inundation (rain and snow-melt periods) extending along the outer edges" (SEA at 8). Both the BLM hydrologist and a BLM wildlife biologist concluded, after inspecting the wetlands area in sec. 11, that it qualified as a "wetlands" under Exec. Order No. 11,990, regardless of the source of the water. See SEA, Appendix A, Parts I and II. BLM determined that construction and maintenance of either the Proposed Action or Alternatives A or B, all of which cross the wetlands area, would result in the modification and degradation of that area to a greater or lesser degree. 5/ BLM described these as short- and long-term unavoidable adverse impacts. BLM also noted that in each case

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3/ Arnell has claimed that BLM should not restrict its consideration of alternative routes only to those originally proposed by Pure, suggested by Arnell, or approved by BLM, but that BLM should consider any route that was logical and direct. Although Arnell identified a new route following the Apr. 1, 1987, field meeting that was included in the SEA as Alternative B, there is no indication that Arnell proposed other routes prior to preparation of the SEA. In its SEA, at page 7, BLM properly stated that it was only required to consider reasonable alternatives. See In re Blackeye Again Timber Sale, 98 IBLA 108, 111-12 (1987). 4/ BLM stated that, owing to a decrease in water being discharged by Union Oil, the wetlands area had decreased in size since 1984, but that water was still being discharged at an average rate of 30,000 barrels per day (SEA at 8).

5/ BLM noted that all three of those alternatives would result in a loss of vegetation, a continuous soil loss through erosion, modification and

there was also the possibility that the pipeline could break, spilling oil into the wetlands area. By contrast, BLM concluded that Alternative C did not cross the wetlands area. In its SEA, at page 26, BLM stated that Alternative C alone would comply with Exec. Order No. 11,990, which was interpreted to require that "construction \* \* \* avoid wetlands areas, versus attempting mitigation to allow construction or surface disturbing activities in those areas, where practicable alternatives are available."

BLM also stated that certain directives in the Natrona MFP and the Platte River Resource Area Resource Management Plan (RMP), which was approved in July 1985 to supersede the Natrona MFP, called for placing right-of-way facilities, whenever practical or feasible, adjacent to existing facilities, i.e., within a corridor established by use rather than designation, in order to minimize disturbance to other resources. BLM concluded that only Alternative C would comply with these directives. 6/ BLM also noted that only Alternative C would conform to the requirement in the Natrona MFP and Platte River Resource Area RMP that surface development be 500 feet or more from streams, reservoirs, and canals.

BLM stated that the approved pipeline route, which bisected oil and gas lease C-36770 with three existing wells located between the Powder River Road and the right-of-way and one well located west of the pipelines, constituted a "minimal" disturbance to lease operations (SEA at 16). With one possible exception, there had been no disruption of access to the wells, even with one road crossing the pipeline route, BLM noted. BLM anticipated no delay in the future approval and construction of flow lines crossing the pipeline route and no adverse impact to the future construction of roads crossing that route given proper location and construction of the roads. Id. at 17-18. Finally, BLM stated that Arnell should not be impeded from further developing its lease, even given the minimum Wyoming spacing for oil wells of 2-1/2 acres, because wells would need to be offset only a few feet to avoid the pipeline route.

In assessing the environmental impact of the Proposed Action and Alternatives A and B, BLM also addressed the impact of removal of the existing pipelines, including the cost of removal to Unocal and the potential disruption of pipeline service.

At pages 28 and 29 of the SEA, BLM recommended adoption of Alternative C, i.e., issuance of a right-of-way grant for the approved route,

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fn. 5 (continued)

degradation of the wetlands, alteration and reduction of wetlands wildlife habitat, and increased sediment flow into the Poison Spider Creek, the drainage area for the wetlands (SEA at 19).

6/ BLM stated that the approved pipeline route, which was from 400 to 2,500 feet west of the Power River Road, "parallel[s] other existing facilities, which include overhead power lines, buried telephone lines, and the county road, within a one-quarter mile corridor either side of the county road," and, thus, was situated within a "heavily used corridor area" (SEA at 16).

because it was "most consistent" with past and current BLM planning and Exec. Order No. 11,990, would "not result in any significant impacts to Arnell's oil and gas lease rights, uses of the surface of the lease, value of the lease, or safety of operations on the lease," and would not entail the additional cost of removing the existing pipelines for Unocal or disrupt pipeline service. In a Decision Notice, dated December 3, 1987, the Area Manager selected Alternative C. On the same day, the Area Manager offered a corresponding right-of-way grant to Unocal, requiring execution of the grant within 30 days of receipt thereof and providing a 30-day period from receipt of the letter for the filing of protests to proposed issuance of the right-of-way grant. <sup>7/</sup>

On December 31, 1987, Arnell filed a protest contending that BLM had failed to address its concerns; gave primary consideration to removal of the existing pipelines; did not clearly explain how it had relied on the SEA; and failed properly to consider issues identified by the Board. Arnell requested a "meaningful reconsideration" of the right-of-way grant, in accordance with the Board's decision.

By decision dated January 19, 1988, the District Manager, Casper District, Wyoming, denied Arnell's December 1987 protest, concluding that the Area Manager had properly determined that the offered right-of-way grant was most consistent with BLM land use planning and Exec. Order No. 11,990 and would not adversely affect Arnell's lease operations. The District Manager also addressed each of the issues raised by Arnell in its protest. By decision dated January 21, 1988, BLM issued right-of-way grant W-88682. Arnell has appealed. See note 1, supra.

On appeal, Arnell contends that BLM's reconsideration of issuance of a right-of-way grant through Arnell's oil and gas lease in sec. 11 was biased in favor of the approved pipeline route, giving little or no consideration to the questions posed by the Board in remanding the case to BLM, and, instead, focused on the effect on Unocal of changing the pipeline route. Arnell specifically argues that Alternative B did not cross a wetlands area, and that, even if it did, the area was not subject to protection as a wetlands under Exec. Order No. 11,990, since the water is derived from an artificial source. Further, Arnell asserts that a portion of the same area was competitively leased (W-92817) on April 10, 1985, without any protective stipulations regarding a wetlands. It contends that, even if its alternate route crosses a wetlands, BLM did not consider either measures to protect the wetlands or diversion of the water discharged by Union Oil onto other land. Arnell argues that Alternative B is, like the approved route, within a corridor established by use where it is situated within one-half to three-quarters of a mile from the Powder River Road and was, thus, not precluded by BLM land use planning.

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<sup>7/</sup> The effective date of the grant was to be Jan. 31, 1987, the day following the Board's decision in Arnell which set aside the original grant issued Jan. 22, 1985.

Arnell contends, regarding interference with its lease operations, that BLM offered solutions to conflicts posed by Arnell without regard to the cost to Arnell of placing flow lines under the pipelines, constructing new access roads so as to avoid the pipelines, and directionally drilling new wells. Arnell concludes that these solutions indicate that the pipe-line "does and will interfere with Arnell's operations" and that the cost of avoiding interference itself diminishes Arnell's lease rights (SOR at 22). Arnell requests the Board to vacate the January 1988 Area Manager's decision issuing right-of-way grant W-88682, and remand the case to BLM for further consideration.

In remanding the case to BLM, we did so because of deficiencies in the record supporting issuance of Pure's crude oil pipeline right-of-way. The primary question now presented to the Board by this appeal is whether those deficiencies have been rectified and, thus, whether the record now provides adequate support for BLM's decision to again issue the right-of-way grant along the approved route. See Fuel Resources Development Co., 59 IBLA 378, 379 (1981). In resolving that question, we are, of course, only concerned with that portion of the right-of-way as it crosses the lands in sec. 11, under lease to Arnell.

[1] The first issue we required BLM to address on remand was whether Pure's original proposed route (Proposed Action) or Arnell's suggested alternative (Alternative A) crossed a wetlands area and whether mitigating measures might protect that area. The record indicates that BLM considered this issue on remand. See SEA at 10-11, 13-14. In addition, BLM considered Arnell's other alternative route (Alternative B). BLM concluded that Alternative B also crossed the saturated or subirrigated portion of the wetlands area. See SEA, Exh. B. BLM regarded the wetlands area as meeting the definition of a wetlands under Exec. Order No. 11,990.

Arnell contends that Alternative B does not cross an "inundated area" (SOR at 10). It is clear, however, that BLM did not regard the portion of the wetlands area crossed by Alternative B as an area of standing or flowing water, but as an area on the perimeter of standing water which was periodically inundated sufficiently to create saturated conditions. See SEA, Appendix A, Parts I and II. 8/ BLM concluded that Alternative B crossed this area. Arnell has offered no convincing evidence to the contrary. 9/

Arnell argues that, in any case, the wetlands area does not merit protection as a wetlands under Exec. Order No. 11,990 because the water is derived from an artificial source. We do not agree for the following reasons.

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8/ A BLM wildlife biologist stated that the wetlands area had "flowing water several inches deep in places through a surface area of approximately four acres," with vegetation primarily of cattails and algae, and a "zone of water-saturated soils twenty to 100 feet wide" extending east of the flowing water, with vegetation of salt grass (SEA, Appendix A, Part II, at 2).

9/ Arnell does suggest that BLM may not have been aware where Alternative B ran because BLM had found that "many of the stakes" set by Arnell in April

Section 7(c) of Exec. Order No. 11,990 defines a wetlands as an area that is "inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction." The Executive order contains no conditions regarding the source or quality of the water supporting the wetlands. All that is required is that an area be inundated with sufficient frequency to exhibit the characteristics of a wetlands. BLM regards the wetlands area as primarily created by water discharged by Union Oil operations in the South Casper Creek Field. <sup>10/</sup> The record indicates that the area in question has received water discharged by those operations since 1972, at an average rate of between 30,000 and 40,000 barrels per day. This has created a area which is properly regarded as a wetlands within the meaning of Exec. Order No. 11,990. <sup>11/</sup> Cf. United States v. Akers, 651 F. Supp. 320 (D. Cal. 1987) (nature of land, not method by which it reached its wetlands state, is critical, therefore, man-made wetlands are wetlands for purposes of determining the jurisdiction of the Environmental Protection Agency and the Corps of Engineers pursuant to the Clean Water Act, as amended, 33 U.S.C. § 1344 (1982)). The fact that Union Oil might some day divert its discharges or cease to discharge any water does not negate the present fact of the existence of the wetlands. The existing wetlands are a factor which BLM properly took into account.

We also instructed BLM to consider whether mitigating measures might protect the wetlands in the case of any pipeline route crossing the wetlands. It was BLM's determination in its SEA, at pages 19 and 26, that any

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fn. 9 (continued)

1987 were "down" at the time of a BLM inspection later in that month (SOR at 10). The record indicates that BLM employees who inspected the pipeline route found that a number of stakes had been "broken off or pushed down," probably by grazing cattle (SEA, Appendix A, Part II, at 2). However, they were assisted by an Arnell employee in restaking the route and there is no suggestion that they or other BLM employees who conducted a subsequent inspection in June 1987 were unable to follow Arnell's intended route.

<sup>10/</sup> A BLM wildlife biologist noted, however, that, while the discharged water is the "major source of water to the wetlands," the wetlands "may receive a substantial amount of water from groundwater or surface flow" because it has a large watershed basin (SEA, Appendix A, Part II, at 2).

In either case, as noted infra, the area is entitled to protection under Exec. Order No. 11,990.

<sup>11/</sup> BLM did not respond to Arnell's assertion that because BLM issued an oil and gas lease for the wetlands area without any protective stipulations the area is, in fact, not wetlands. Leasing without protective stipulations, however, does not itself establish that the land is not wetlands. BLM still maintains the authority through the application for permit to drill process to control the placement of wells or other surface disturbing activities within the lease area so as to avoid the wetlands.

of the routes crossing the wetlands would cause unavoidable adverse impacts which could not be mitigated "other than by location of the pipelines outside of the wetlands." Arnell has offered no evidence to dispute this conclusion. In any case, section 6740.06 B. of the BLM Manual, which implements Exec. Order No. 11,990, provides that it is BLM's policy to "[a]void construction in wet-land riparian areas whenever there is a practical alternative." In the present case, BLM determined that Alternative C presented a "practical alternative" to crossing the wetlands. In such circumstances, BLM was required by Exec. Order No. 11,990 and the BLM Manual to avoid authorizing construction of pipelines through the wetlands in sec. 11. 12/

On remand, BLM examined the question of what pipeline route best accorded with the Natrona MFP, as well as the Platte River Resource Area RMP, the planning document which superseded the Natrona MFP. In its SEA, BLM concluded that only Alternative C was consistent with the corridor planning decisions in both of those documents. The MFP and the RMP each recognize corridors established by use. BLM explained:

There is no designated corridor which applies to this project, however, the existing linear uses in this area create a corridor by use, with numerous linear facilities located within one-half mile of the Powder River county road on the south and west, and within one-half to three-quarters of a mile on the north and east of the county road.

(SEA at 22).

We find that although both Alternatives B and C are located within that "corridor of use," Alternative C is clearly situated closer to the road and, thus, more closely conforms with BLM's policy of locating rights-of-way near existing facilities.

In addition, BLM concluded in its SEA, at page 25, that only Alternative C is consistent with the prohibition in the Platte River Resource Area RMP from engaging in surface development within 500 feet of live streams, lakes, reservoirs, and canals and associated riparian habitat. Arnell contends that the artificial source of the water flowing through the wetlands area undercuts adherence to this prohibition. The prohibition is clearly intended to reduce or eliminate degradation of water quality and protect riparian habitat. The fact that the prohibition did not, in fact, specifically mention a water source such as that involved in this case does not undercut BLM's reliance on this restriction, or its finding that only Alternative C was compatible with the restriction. Moreover, both planning documents assume that siting decisions will be congruous with all applicable

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12/ Arnell states that BLM also should have considered the diversion of Union Oil's discharged water onto other land. We note, however, that the wetlands existed at the time of the issuance of Exec. Order No. 11,990. Section 1(a) of that order directs the protection of wetlands to the extent possible from "destruction, loss or degradation."

restrictions, including, in this case, Exec. Order No. 11,990. As noted above, selection of Alternative C is consistent with that order.

Finally, in our remand, we directed BLM to consider whether the approved route diminished and/or interfered with Arnell's rights under lease C-36770. BLM considered this question at length. See SEA at 16-19. On appeal, Arnell does not posit any other ways in which the approved route will interfere with development under its oil and gas lease other than those previously stated, i.e., that the pipelines will create "problems" in the future with the placement of flow lines, road construction, and drill-ing activities (SOR at 26). Arnell recognizes that BLM has addressed these problems and offered solutions, but contends that BLM has failed to consider the cost to Arnell of these solutions.

Lease C-36770 specifically reserves to the Secretary the right to authorize rights-of-way across the leased land. This provision is required by section 29 of the Mineral Leasing Act, 30 U.S.C. § 186 (1982). That section is congressional recognition that some interference with lease operations is tolerable. Clearly, in areas of extensive oil and gas development by unrelated parties, it is the norm. To what extent the approved pipeline route might create future operational difficulties for Arnell can only be the subject of conjecture in this case, because Arnell has submitted no specific plans for future development of its lease. 13/ As to those problems raised by Arnell, at most, Arnell will not be able to place its future drill sites, flow lines, and roads exactly where it might desire, and it might incur some inconvenience in ensuring that any development activity does not encounter the pipelines. Those possibilities do not amount to prohibitive interference with or diminishment of Arnell's lease rights or establish the necessity of the lands for Arnell's use.

Arnell argues at some length that the present case is comparable to Penroc Oil Corp., 84 IBLA 36 (1984), where we concluded that BLM improperly issued a right-of-way for the disposal of salt water from oil and gas operations outside certain leased land in wells drilled on the leased land, because such a right-of-way unreasonably interfered with operations under the lease by precluding future exploratory or developmental work in those wells. In so holding, we relied on section 3(b) of the lease which authorized the Secretary to

lease, sell or otherwise dispose of the surface of the leased lands \* \* \* insofar as said surface is not necessary for the use of the lessee in the extraction and removal of oil and gas herein, or to dispose of any resource in such lands which will not unreasonably interfere with operations under this lease.

In Penroc, we observed that a lessee's rights vary based on the terms of the lease and provisions of applicable statutes and regulations. In

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13/ We note that the SEA states that the last well to be drilled on Arnell's lease was completed as a dryhole in the Tensleep formation in 1968 (SEA at 9).

the present case, section 3(b) of oil and gas lease C-36770 provides, in accordance with section 29 of the Mineral Leasing Act, only that the Secretary can dispose of the surface of the leased lands to the extent that the surface is "not necessary" for the lessee's use. However, as we observed above, the Secretary's authority to lease, sell, or dispose of the surface of leased lands contemplates that some degree of interference with the lessee's use is allowable.

Penroc does not control the outcome of the present case. The facts of Penroc are clearly distinguishable. Thus, an authorization to use an existing well to dispose of salt water, thereby effectively precluding future operations in that well, is not equivalent to an authorization to place pipelines across leased land where the lessee has failed to establish that the lands crossed by the right-of-way are "necessary" for its future operations.

Moreover, section 3(a) of lease C-36770 provides, in accordance with section 29 of the Mineral Leasing Act, that the Secretary reserves the right to authorize rights-of-way across the leased land "as may be necessary or appropriate to the working of the same or of other lands containing the deposits described in the [Mineral Leasing Act]." Arnell contends that the approved pipeline right-of-way is not "necessary or appropriate" under section 3(a) of the lease. See SOR at 26. The record, however, clearly indicates that the approved right-of-way is, if not necessary, at a minimum "appropriate" to Union Oil's oil and gas operations in lands north of sec. 11 in the South Casper Creek Field, in that the approved pipelines transport crude oil from an existing pipeline to the site station, where the oil is blended with oil from the field and then returned to the main pipeline. The existence of other routes over which the pipelines might run does not alter the fact that the approved route is "necessary or appropriate" to Union Oil's operations on other leased land.

Arnell also contends that BLM gave undue consideration to the "economic, operational and environmental" impact of relocating Unocal's pipelines in deciding to reissue the right-of-way grant along the existing route (SOR at 25). That the SEA shows that BLM gave consideration to that impact cannot be disputed. The allegation that its consideration was "undue," however, is not justified. BLM's decision to reissue the right-of-way grant along the existing route was based principally on those factors already discussed. There is no evidence, nor has Arnell offered any, that BLM was, in its recent environmental analysis and approval process, biased in favor of approval of the existing route. The SEA reflects an objective review of the impacts of the considered alternatives.

BLM, on remand, thoroughly considered all of the relevant factors in authorizing a pipeline right-of-way from Unocal's station site through sec. 11, including the impact on Arnell's present and future operations under lease C-36770, and, in so doing, adequately reviewed all of the issues raised by the Board in our original decision. We, therefore, conclude that the record, as presently constituted, supports BLM's January 1988 decision to issue right-of-way grant W-88682 to Unocal. Arnell has shown no error.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Bruce R. Harris  
Administrative Judge

I concur:

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John H. Kelly  
Administrative Judge